very deed relied upon in proof of title is called in question by the grantee's admission that he held merely as trustee for another, who had paid the purchase money,[15] or that the deed was a fraud upon creditors,[16] or had been antedated;[17] admissions, like any other parol evidence, are competent to prove the state of the title. The doctrine of admissions is to be kept distinct also from the rule that declarations, by one in possession, relating to the character or extent of his possession, are admissible as part of the *res gestæ*, giving color to the act of possession.

RECENT CASES.

BANKRUPTCY — INVOLUNTARY PROCEEDINGS — EFFECT OF CHANGE OF OCCUPATION. — A was engaged in mercantile pursuits during the period when the debts scheduled in a petition in bankruptcy against him were contracted, and the assets acquired or owned. At the dates of the act of bankruptcy, and of the filing of the petition, he was engaged in farming. *Held*, that he is nevertheless amenable to bankruptcy proceedings. *Re Burgin*, 173 Fed. 726 (D. Ct., N. D., Ala.). See NOTES, p. 393.

BANKRUPTCY — PREFERENCES — EXCHANGE OF PROPERTY. — A buyer of cows advanced part of the purchase price. The bankrupt within the four months period delivered the cows giving credit for the advance. *Held*, that the delivery is not a preference. *Templeton* v. *Kehler*, 173 Fed. 575 (Dist. Ct., E. D. Pa.).

Upon the assumption that the buyer had reasonable cause to believe a preference was intended, the case seems wrong on principle. There is, however, sanction for it in the authorities. See *Mills* v. *Virginia-Carolina Lbr. Co.*, 164 Fed. 168. Obviously there can be no distinction between delivery of chattels and payment of money. In either case if the bankrupt at the time of delivery or payment owes this creditor an antecedent debt, such delivery is a preference. *In re Wolf*, 98 Fed. 84. Thus payment of the purchase price within ten days after delivery of the goods under a contract for a so-called "cash sale" is a preference. *In re Morrow & Co.*, 134 Fed. 686. But it is not necessary that the exchange of property and money be actually simultaneous to protect the creditor. *In re Davidson*, 109 Fed. 882. It is submitted that if, after the creditor has parted with title and all control over the property, the bankrupt delivers chattels or money in exchange within the four months' period, such delivery should be deemed a preference. Whether title has passed should be determined by the intent of the parties according to the usual rules in the law of sales. See *Bussey* v. *Barnett*, 9 M. & W. 312.

BILLS AND NOTES — ANOMALOUS INDORSER — PRIMA FACIE LIABILITY. — A made a note payable to B. Before delivery to B, X signed his name on the back. *Held*, that the *primâ facie* liability of X is that of a co-maker. *Borden* v. *Hornthal*, 65 S. E. 513 (N. C.).

BILLS AND NOTES — STATUTES — NEGOTIABLE INSTRUMENTS LAW: EFFECT ON STATUTE MAKING USURIOUS NOTES VOID. — N. Y. Am'd L. 1879, c. 538, § 5, declared void all notes given for usurious consideration. The Negotiable Instruments Law provides that a holder in due course is free from defenses avail-

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[15] Gibblehouse *v.* Stong, *supra.*
[16] Norton *v.* Pettibone, 7 Conn. 319.
[17] Cook *v.* Knowles, 38 Mich. 316.

able to prior parties among themselves. N. Y. LAWS OF 1898, c. 336, § 96. *Held*, that the maker of a usurious note is liable to a holder in due course. *Klar* v. *Kostiuk*, 119 N. Y. Supp. 683 (Sup. Ct. App. Div.).

By the law merchant, illegality of consideration was only an equitable defense. *Hopmeyer* v. *Frederick*, 74 Ill. App. 301. But statutes have frequently declared negotiable instruments given for usurious loans or gambling debts void, even in the hands of a holder in due course. *Claflin* v. *Boorum*, 122 N. Y. 385. Such statutes restrict negotiability, and are contrary to that spirit of the law merchant which aims to protect the *bonâ fide* purchaser. A fair construction of the Negotiable Instruments Law would seem to allow a holder in due course always to hold the maker, regardless of the nature of the consideration given by the payee. *Wood* v. *Babbitt*, 149 Fed. 818. It has sometimes been held, however, that the Negotiable Instruments Law does not affect usury and gambling statutes. *Alexander* v. *Hazelrigg*, 29 Ky. L. Rep. 1212. The purpose of these statutes was the prevention of such offenses, and where not expressly repealed, it has been argued that on grounds of public policy they should continue in force. But such a narrow construction unnecessarily hampers the circulation of notes. See 20 HARV. L. REV. 492.

CARRIERS — SLEEPING CARS — LIABILITY OF CARRIER FOR ACTS OF EMPLOYEE OF SLEEPING CAR COMPANY. — The porter of a sleeping car which was attached to the defendant's train, but which belonged to a separate company, wrongfully refused to make up the plaintiff's berth. *Held*, that the defendant is liable. *Taber* v. *Seaboard Air Line Ry.*, 66 S. E. 292 (S. C.).

By the weight of authority railroads are liable for the acts of the employees of a sleeping car company. The basis of liability is sometimes said to be the fact that both companies are operating the train jointly. *Airey* v. *Pullman Palace Car Co.*, 50 La. Ann. 648. But this explanation is erroneous, for a sleeping car company is not a carrier. *Duval* v. *Pullman Palace Car Co.*, 62 Fed. 265. Nor is such a company conversely liable for the acts of a railway servant. *Lawrence* v. *Pullman Palace Car Co.*, 144 Mass. 1. The carrier's liability is often put upon the ground that the porter is its agent. *Pennsylvania Co.* v. *Roy*, 102 U. S. 451. This, too, is an unsound explanation, for the carrier is liable even though by contract it has no right to control the porter. *Pullman Co.* v. *Norton*, 91 S. W. 841 (Tex.). The real basis of the liability is, as the present case states, that the carrier must make reasonable provision for the comfort and convenience, as well as for the safety of its passengers. See *Dwinelle* v. *N. Y. C. & H. R. R. R. Co.*, 120 N. Y. 117, p. 127. And the delegation of such a duty, whether as to equipment or as to roadway, will not free the carrier from liability for a breach. *Louisville, New Albany, & Chicago Ry. Co.* v. *Snyder*, 117 Ind. 435.

CONFLICT OF LAWS — EQUITY — ENJOINING AN ACT WITHOUT THE JURISDICTION CAUSING DAMAGE WITHIN. — The defendant constructed a canal conveying the waters of the Colorado River by means of an intake situated in Mexico. An accumulation of water resulted within the territory of Arizona which damaged the plaintiff's property situated therein. The plaintiff sought an injunction to prevent the injury. *Held*, that it was within the power of the court to grant the writ. *Salton Sea Cases*, 172 Fed. 792 (C. C. A., Ninth Circ.). See NOTES, p. 390.

CONFLICT OF LAWS — RIGHTS IN PROPERTY — PROPERTY ACQUIRED BY SPOUSES AFTER MARRIAGE. — A French citizen was married in France. As there was no antenuptial contract, the wife under the French law had a community of interest in his property. He subsequently became domiciled in New York where he acquired real and personal property and died intestate. *Held*, that the whole property is subject to the transfer tax. *In re Majot's Estate*, 119 N. Y. Supp. 888 (Sup. Ct., App. Div.).